

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DR JAMES MCDONOUGH,
Plaintiff,

vs.

CASE NO.: 15-08342-CA-01

CIVIL DIVISION

ALEJANDRO MURGUIDO,
and LUIS GOMEZ, individually,
Defendants.

_____ /

THIRD AMENDED COMPLAINT

Plaintiff, DR. JAMES MCDONOUGH, sues the Defendants and alleges the following:

1. This is a cause of action for damages in excess of \$15,000 exclusive of all fees, cost and interest.
2. Plaintiff, DR JAMES MCDONOUGH (“McDonough” and/or “Plaintiff”), seeks to recover damages for defamatory Statements published by ALEJANDRO MURGUIDO and LUIS GOMEZ (“Murguido” and “Gomez” or “Defendant/Defendants”) who, wrongfully and maliciously, accused Plaintiff of committing Corruption Through Threats, as well as other crimes including Aggravated Stalking and Trespass.

PARTIES

3. McDonough is an individual residing in Miami-Dade County (MDC), Florida.
4. Murguido is an individual residing in MDC, Florida.
5. Gomez is an individual residing in MDC, Florida, at the time of the statements.

JURISDICTION AND VENUE

6. Jurisdiction and venue are proper in MDC, in that McDonough resides in and has suffered injury in MDC, Florida as a result of the tortious act of verbally publishing defamatory statements about him.

FACTS

7. On October 29, 2012, Plaintiff had a conversation with Murguido about his dangerous driving behavior in the community, in front of Murguido's house.

8. Murguido was in his front yard speaking with his lawn man, when Plaintiff walking down the street, motioned for his attention. Murguido motioned for Plaintiff to wait a minute.

9. When Murguido was finished speaking with his lawn man, he approached the Plaintiff at the road.

10. After this conversation the Plaintiff walked away. Murguido chased down the Plaintiff with Gomez assisting and detained him without reasonable suspicion or probable cause for over an hour and a half.

11. At least ten officers in addition to the two defendants came to the scene, in an effort to detain the Plaintiff. The Plaintiff was unlawfully searched, and warned against filing a complaint for the detainment.

12. Plaintiff did not enter Murguido's property, on foot or by vehicle, and was on the public street during the encounter, and did not trespass.

13. Plaintiff never threatened Murguido at any time, but did advise he would report him to his supervisor and/or file a complaint, if he continued to drive dangerously. The Plaintiff never yelled at Murguido.

14. The Defendants detained the Plaintiff for over an hour and a half. Miami-Dade Police Department (MDPD) arrived, as it was in their jurisdiction. However, neither Murguido nor Gomez made criminal complaints to the MDPD officers present at the time, and the MDPD supervisor present on the scene commented that the Plaintiff had committed no crimes before releasing him. Any dispute was settled on the scene.

15. On December 27, 2012, January 24, 2013, and again on February 13, 2013, Plaintiff called HPD and Internal Affairs (IA), trying to file a complaint against Murguido for the retaliatory detainment.

16. Murguido then waited for four months, until he was made aware that the Plaintiff was attempting to file a complaint against him, before he began speaking to the Miami-Dade Police Department again.

17. On February 15, 2013 Murguido, not acting within the scope of his employment filed a criminal complaint with Officer W. Marti of the MDPD.

18. Murguido stated that Plaintiff had unlawfully threatened him on October 29, 2012, while trespassing on his property, and that the Plaintiff had also entered his property and threatened him earlier on July 27, 2012. Those statements were false.

19. By stating that to Marti, Murguido accused Plaintiff of committing Corruption Through Threats, section 838.021, Florida Statutes, Aggravated Stalking, section 784.048(3), Florida Statutes, both third degree felonies, as well as Trespass. Section 810(1)(a)(1) Florida Statutes.

20. On March 4, 2013 Murguido confirmed to Miami-Dade Police Officer Alvarez his earlier statement to Officer Marti from February 15, 2013, and identified photos of Plaintiff. This was not done in his official capacity as a Homestead Police Officer.

21. On April 9, 2013, Murguido gave a sworn taped statement to Officer Alvarez, and reiterating his earlier accusations of Aggravated Stalking, Corruption Through Threats and Trespass.

22. Murguido alleged that Plaintiff threatened him by saying he was “going to get him”.

23. Murguido alleged that he asked/demanded the Plaintiff to leave several times and the Plaintiff refused to leave.

24. Murguido alleged that Plaintiff would not leave until he walked away and entered his garage.

25. Murguido alleged that Plaintiff had yelled at and threatened him earlier on July 27, 2012. This statement is false as no personal contact occurred between the Plaintiff and Murguido in 2012 other than on October 29, 2012.

26. The statements made on April 9, 2013 to Detective Alvarez were false.

27. On April 10, 2013 Gomez made unsworn statements to MDPD Detective Alvarez. These statements allege Plaintiff committed at least Corruption Through Threats and Trespass.

28. On April 15, 2013, Plaintiff was arrested on his property, based upon the false statements of the Defendants. This was for Corruption Through Threats and Aggravated Stalking, both third degree felonies.

29. On May 7, 2013, Gomez gave a sworn recorded statement to Alvarez, in the presence of MDPD Detective Webster.

30. Gomez alleged that Murguido was in his garage area working on his vehicles, when the Plaintiff stopped in front of Murguido’s property and started screaming at him. The Plaintiff then stepped onto Murguido’s property and continued screaming.

31. Gomez alleged that Murguido was “screaming at the top of his lungs” for Plaintiff to get off his property and Plaintiff refused. Gomez alleges that Plaintiff would not leave until Murguido went into his house.

32. The statements made by Gomez on May 7, 2013 were false.

33. On August 19, 2014 Photographyisnotacrime.com, an online news site, published an article documenting the incident between the Plaintiff and Murguido and the Plaintiff’s later arrest.

34. On August 20, 2014 in a retaliatory manner, Murguido contacted Detective Alvarez and again attempted to have the Plaintiff arrested for Stalking. The Plaintiff did not commit the actions complained of by Murguido.

35. The Defendants at all times relevant to this complaint were not in the performance of any official act, nor were they acting within the scope of their employment when they made the false statements.

36. These statements were not privileged, were published to a third party, with malice, thereby damaging the Plaintiff, and intentionally inflicting substantial emotional distress through the tarnishing of his good name and reputation, both personally and professionally.

Count I
(Slander *Per Se*—As to Murguido)

37. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 above as though fully set forth herein.

38. On February 15, 2013 Murguido gave unsworn statements to MDPD Officer Marti. These statements allege Plaintiff committed at least Corruption Through Threats, Aggravated Stalking, and Trespass. This was not done in his official capacity as a police officer with the City of Homestead.

39. On March 4, 2013, Murguido confirmed to MDPD Detective Alvarez, his earlier statements to Officer Marti. This was not done in his official capacity.

40. On April 9, 2013, Murguido gave recorded statements under oath to Detective Alvarez. These statements allege Plaintiff committed Corruption Through Threats, Aggravated Stalking, and Trespass. This was not done in his official capacity.

41. On August 20, 2014, Murguido went to Detective Alvarez and again falsely accused the Plaintiff of stalking.

42. None of the statements made by Murguido to either Marti or Alvarez were privileged.

43. The statements made to Marti and Alvarez accused Plaintiff of committing crimes.

44. The statements made to Marti and Alvarez were false and made with malice.

45. Murguido knew or should have known the statements made to Marti and Alvarez were not true.

46. Notwithstanding that, Murguido went to the police and accused the Plaintiff of Aggravated Stalking, Corruption Through Threats and Trespass aware that injury to the Plaintiff would result.

47. The statements made to Marti and Alvarez are defamatory per se.

48. As a direct and proximate result of the actions of the defendant, the Plaintiff suffered both physical and mental injuries and is entitled to relief.

Wherefore the Plaintiff is entitled to:

A. Compensatory damages for the physical and mental injuries suffered.

B. Punitive damages.

C. Cost of this action.

D. Any other remedy the Court deems appropriate.

Count II
(Slander *Per Se*—As to Gomez)

49. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 above as though fully set forth herein.

50. On April 10, 2013 Gomez made unsworn statements to MDPD Detective Alvarez. These statements allege Plaintiff committed at least Corruption Through Threats and Trespass. This was not done in his official capacity.

51. On May 7, 2013 Gomez gave recorded statements under oath to Detective Alvarez. These statements allege Plaintiff committed Corruption Through Threats and Trespass. This was not done in his official capacity.

52. None of the statements made by Gomez to Alvarez were privileged.

53. The statements made to Alvarez accused Plaintiff of committing crimes were false and were made with malice.

54. Gomez knew or should have known the statements to Alvarez were not true.

55. Notwithstanding that, Gomez went to the police and accused the Plaintiff of Aggravated Stalking, Corruption Through Threats and Trespass aware that injury to the Plaintiff would result.

56. The statements made to Marti and Alvarez are defamatory per se.

57. As a direct and proximate result of the actions of the defendant, the Plaintiff suffered both physical and mental injuries and is entitled to relief.

Wherefore the Plaintiff is entitled to:

A. Compensatory damages for the physical and mental injuries suffered.

- B. Punitive damages.
- C. Cost of this action.
- D. Any other remedy the Court deems appropriate.

Count III
(Intentional Infliction of Emotional Distress as to Murguido)

58. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 above as though fully set forth herein.

59. Defendant Murguido made slanderous statements against Plaintiff that were not privileged.

60. The statements were intentionally made with deliberate or reckless intent to harm Plaintiff when he knew, or should have known, that emotional distress to McDonough would likely result.

61. The acts by Murguido involved extreme and outrageous conduct that goes beyond all bounds of decency and are intolerable in a civilized community.

62. The acts by Murguido caused and continues to cause McDonough to suffer severe emotional distress.

63. As a result of the infliction of emotional distress by Murguido, McDonough has suffered damages that include, but not limited to, humiliation, harassment, mental suffering and pain, damage to family relationships, damage to reputation, and other damages which are permanent or continuing in nature.

64. As a direct and proximate result of the actions of the defendant, the Plaintiff suffered both physical and mental injuries and is entitled to relief.

Wherefore the Plaintiff is entitled to:

- A. Compensatory damages for the physical and mental injuries suffered.

- B. Punitive damages.
- C. Cost of this action.
- D. Any other remedy the Court deems appropriate.

Count IV
(Intentional Infliction of Emotional Distress as to Gomez)

65. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 above as though fully set forth herein.

66. Defendant Gomez made slanderous statements against Plaintiff that were not privileged.

67. The statements were intentionally made with deliberate or reckless intent to harm Plaintiff when he knew, or should have known, that emotional distress to McDonough would likely result.

68. The acts by Gomez involved extreme and outrageous conduct that goes beyond all bounds of decency and are intolerable in a civilized community.

70. The acts by Gomez caused and continues to cause McDonough to suffer severe emotional distress.

72. As a result of the infliction of emotional distress by Gomez, McDonough has suffered damages that include, but not limited to, humiliation, harassment, mental suffering and pain, damage to family relationships, damage to reputation, and other damages which are permanent or continuing in nature.

73. As a direct and proximate result of the actions of the defendant, the Plaintiff suffered both physical and mental injuries and is entitled to relief.

Wherefore the Plaintiff is entitled to:

- A. Compensatory damages for the physical and mental injuries suffered.

- B. Punitive damages.
- C. Cost of this action.
- D. Any other remedy the Court deems appropriate.

Jury Demand

Plaintiff demands a trial by jury on all issues so triable.

Dated: October 19, 2018

Respectfully submitted,

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